particularly jury assessments of witness credibility. *See* 04-597 Pet. Br. at 33-38; 04-597 Reply Br. at 16-19. In *Unitherm*, the Federal Circuit overturned a jury verdict for the petitioner in an antitrust litigation. One of the principal arguments made by the *Unitherm* petitioner is that the court of appeals improperly usurped the role of the jury by drawing only those inferences with which the court of appeals agreed and by ignoring other evidence. *See* 04-597 Pet. Br. at 33-38. As explained above, the Seventh Circuit committed the same fundamental error in this case.

Second, *Unitherm* involves the interplay between the Seventh Amendment and Rule 50. The petitioner in *Unitherm* has argued that "[r]eview of sufficiency of the evidence under Rule 50(b) must be tempered by the Constitutionally mandated respect for the role of the jury in fact-finding." 04-597 Pet. Br. at 19; *see also id.* at 25 (discussing "Seventh Amendment values" and the "longstanding and oft-repeated distinctions between the constitutional roles and competencies of juries and judges"). Because the Court's decision in *Unitherm* may address the relationship between Rule 50 and the Seventh Amendment, it could have a direct impact on this case.

Third, the petitioner in *Unitherm* relies on this Court's decision in *Reeves* when arguing that the court of appeals improperly invaded the province of the jury. *See* 04-597 Pet. Br. at 33, 36, 39. In particular, the petitioner argues that, in "substitut[ing] its judgment concerning the weight of the evidence for the jury's," the Federal Circuit did "what *Reeves* expressly held is improper." *Id.* at 36 (citing *Reeves*, 530 U.S. at 152-53). As explained in STI's petition (at 11, 13), in *Reeves* this Court stated that a jury is required to believe the "uncontradicted and unimpeached testimony of *disinterested* witnesses," 530 U.S. at 150, but it left unresolved the threshold question in this case: whether—as the Seventh Circuit held—a jury must believe the allegedly "uncontradicted and unimpeached testimony" of an

interested witness. If the Court's decision in *Unitherm* discusses the *Reeves* case, it may shed important light on this case.

Granting certiorari in this case would complement the grant of certiorari in *Unitherm* and provide the Court with the means of explicating inter-related aspects of Rule 50 and of the proper posture for appellate courts when reviewing jury fact-finding. At a minimum, however, the Court should hold this case pending the disposition in *Unitherm*.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the petition, the petition should be granted.

Respectfully submitted,

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